

AF/IDW

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

Application No. : 10/694,349
Confirmation No. : 2564
Applicant : Lubcke
Filed : October 28, 2003
Title : Measuring instrument
TC/A.U. : 2858
Examiner : M. Kramskaya
Docket No. : LUBC3001C/FJD
Customer No. : 23364

REQUEST FOR REHEARING

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22202-3514

Sir:

Pursuant to the provisions of 37 CFR 41.52, submitted herewith is
Applicant/Appellant's REQUEST FOR REHEARING.

The Decision from the Board of Patent Appeals and Interferences dated August 19, 2011 affirms the examiner in his rejection of claims 1, 6 and 10 - 12 under 35 USC 102(b) by Venditti, and the rejection of claims 2, 8 and 9 under 35 USC 103(a) over Venditti in view of Wetzel.

The rejection of claims 1, 6 and 10 - 12

Applicant/Appellant had argued in their BRIEF ON APPEAL that Vinditti did not disclose the same arrangement. It was stated that "...the measuring instrument and higher - order unit [of Vinditti] have to be connected by a second pair of lines and by this connection the measuring instrument is powered utilizing 'said supply current and at least a portion of the signal current supply'. " Then in the Applicant/Appellant's REPLY BRIEF, it was stated that "[t]he quoted passage from claim 1, namely: 'said supply current and at least a portion of the signal current supply'in fact does refer to powering a measuring instrument." It was then concluded that "[t]o supply is to power."

In affirming the examiner, the Board states that "[a]ppellants' argument that the claim language requires the measuring instrument to be powered by 'said supply current and at least a portion of the signal current' is not persuasive because it is wholly unsupported by the evidence." The Board then concludes: "[a]ppellants have neither established that the Specification requires such an interpretation, nor cited any extrinsic source tending to show that 'to supply is to power'."

The specification does support the quoted limitation. See, for example lines 2 - 10 on page 10 of the specification.

As to "extrinsic" evidence, Applicant/Appellants are not aware of any

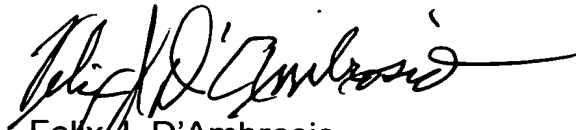
affirmative duty in the Patent Law which requires any more evidence than is found in the specification to support a recitation in the claims

The rejection of clams 2, 8 and 9

The Board concluded that the examiner was correct in his rejection of these claims. "[b]ecause we find that Vinditti does teach the claimed 'supply' to the measuring instrument.." But the basis of this finding is that the "supply" is not supported by the specification or any extrinsic evidence. And as noted above, the specification does support this limitation and "extrinsic" evidence is not needed.

Applicant/Appellant's respectfully request that the Decision of the Board be reconsidered in view of the above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Felix J. D'Ambrosio", with a long horizontal flourish extending to the right.

Felix J. D'Ambrosio
Reg. No. 25,721

Date: October 19, 2011

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